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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,924	06/06/2000	Roger P. Jackson	00,063	9408

7590

03/23/2004

John C McMahon  
PO Box 30069  
Kansas City, MO 64112

EXAMINER
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DAVIS, DANIEL J

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/588,924	<b>Applicant(s)</b> JACKSON, ROGER P.	
	<b>Examiner</b> D. Jacob Davis	<b>Art Unit</b> 3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

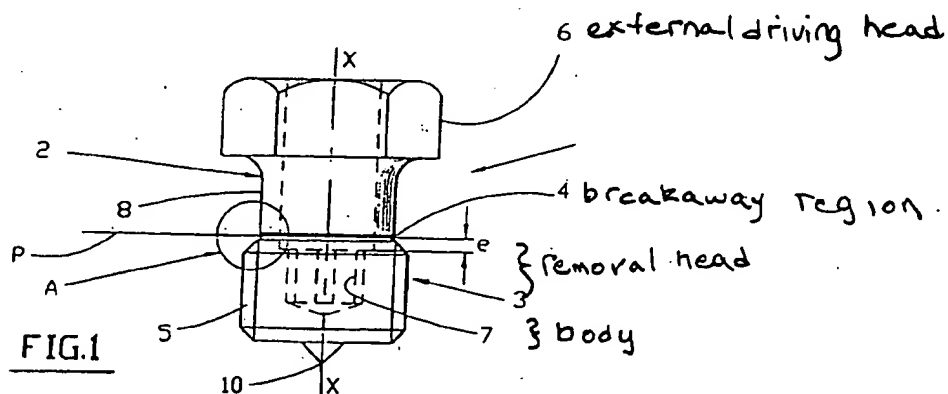
## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(c) which forms the basis for all obviousness rejections set forth in this Office action:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-4 and 9-13 are rejected under 35 U.S.C. 103(c) as being unpatentable over Gournay et al. (US 6,193,719 B1) when considering all embodiments and the teachings from the specification. Regarding claims 1 and 9, Gournay discloses a "closure for use in conjunction with a medical implant having an inward threaded surface" (Fig. 1). See drawing below for an explanation of corresponding parts.



In the specific embodiment of Fig. 1, Gournay does not illustrate an exterior/outwardly facing removal head. However, Gournay states, "In a general way, any type of print may be employed for the two component parts of the plug with, however, a preference for hexalobate prints. It is in this way possible to provide square, triangle, cruciform prints etc. for clamping and disassembly, *interior and exterior*, and any type of fracture initiating profile" (Col. 4, lines 46-51). Therefore, Gournay anticipates an exterior/outwardly facing removal head, even though the many possible combinations are not all illustrated in the drawings. In the alternative, Fig. 12 teaches an exterior removal head. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the embodiment of Fig. 1, as taught by Fig. 12, to make an exterior removal head since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

The driving head and the removal head may not receive and be manipulated by the same drive tool. The head is designed to break off at a predetermined torque (Col. 1, lines 47-51). Regarding the use of the implant to close a channel between two spaced arms, Figs. 12-13 illustrate a closure being used with an implant having arms.

The driving head 6 is joined to the closure body by a breakaway region 4. The breakaway region 4 breaks away when a preselected force is applied to the driving head 6 (Col. 1, lines 47-51 and Col. 2, lines 34-35).

The driving head and the removal head have different polyhedral shapes, which prevent the installation tool from inadvertently gripping the removal head 6. Gournay teaches that the shape of either the driving head or the removal head may be of any

external polyhedral shape. In the alternative, it would have been obvious to make the removal head out of any external polyhedral shape, especially in view of Fig. 12.

The exterior polyhedral shape of the removal head inherently may not have threads in order for the driver to drive the fastener. Moreover, a polyhedral shape of a square or a triangle (as recited in the specification) inherently must have a different size than the body, whether that different size is an area or a perimeter. The body is circular while the removal head has a polygonal shape. Therefore, the body and the removal head have a different shape.

Claims 5-8 are rejected under 35 U.S.C. 103(c) as being unpatentable over Gournay in view of Cotrel (US 5,154,719). Gournay discloses the elements of the claims as described above, and further teaches a medical implant with arms in the embodiment of Fig. 13. However, Gournay fails to disclose that the threads may be on the interior of the arms rather than the exterior of the arms. Nevertheless, Cotrel teaches arms having interior threads (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to place the threads on the inside of Gournay's arms, as taught by Cotrel, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

The driving head taught by Gournay has a driving head 6 that is connected to the closure body by a breakaway region 4.

***Response to Arguments***

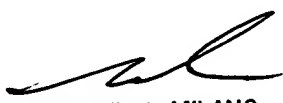
Applicant's arguments have been considered but they are not persuasive. Gournay discloses from the various embodiments and the specification, or at the very least makes obvious, "[a] removal head second external cross section being different in size and shape from an external cross-section of said body and having no threads thereon."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Jacob Davis whose telephone number is (703) 305-1232. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJD  
March 18, 2004

  
MICHAEL J. MILANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700